

JS 44 (Rev. 06/17)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

## I. (a) PLAINTIFFS

MOORE OUTDOOR REJUVENATION, INC 139 Schoolhouse Lane,  
Glen Mills, PA 19342

(b) County of Residence of First Listed Plaintiff Delaware Cty, PA  
(EXCEPT IN U. S. PLAINTIFF CASES)

(c) Attorney Firm Name, Address, and Telephone Number  
CHRISTOPHER I. MCCABE, ESQ., CHARLSON BRABER MCCABE &  
DENMARK, 1628 JFK Boulevard, Suite 1803  
Phila PA 19103 - 215-330-5702

## DEFENDANTS

BONDEX INSURANCE COMPANY  
30A Freeland Road, Suite 120, Florham Park, NJ 07932

County of Residence of First Listed Defendant n/a  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |
|---|---------------------------------------|---------------------------------------|
| Citizen of This State   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            |
| Citizen of Another State                                      | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 |
| Citizen or Subject of a Foreign Country                       | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            |
| Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 170 Other Contract <input type="checkbox"/> 175 Contract Product Liability <input type="checkbox"/> 176 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)  
28 USC section 1332

Brief description of cause  
Claim under payment bond issued by Defendant

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P.

DEMAND \$  
87,505.00

CHECK YES only if demanded in complaint  
JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE  
10/19/2018

SIGNATURE OF ATTORNEY OF RECORD  
s/ Christopher I. McCabe

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

Oct 19 2018

TJS TJS

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

18

4497

## DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 139 Schoolhouse Lane, Glen Mills, PA 19342

Address of Defendant: 30A Freeland Road, Suite 120, Florham Park, NJ 07932

Place of Accident, Incident or Transaction Bucks County, PA

## RELATED CASE, IF ANY:

Case Number \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when Yes is answered to any of the following questions:

- |  |                              |  |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above

DATE 10-19-2018

  
 Attorney-at-Law / Pro Se Plaintiff

48296

Attorney I.D. # (if applicable)

## CIVIL: (Place a ✓ in one category only)

## A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases  
(Please specify) \_\_\_\_\_

## B. Diversity Jurisdiction Cases:

- ☒ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify) \_\_\_\_\_
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases  
(Please specify) \_\_\_\_\_

## ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, \_\_\_\_\_, counsel of record or pro se plaintiff, do hereby certify

- ☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs
- ☐ Relief other than monetary damages is sought

OCT 19 2018

DATE \_\_\_\_\_

Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE A trial de novo will be a trial by jury only if there has been compliance with F R C P 38

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
**CASE MANAGEMENT TRACK DESIGNATION FORM**

MOGRE OUTDOOR REJUVENATION, INC. :

CIVIL ACTION

v. :

BONDEX INSURANCE COMPANY :

NOV 18

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In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

10-19-2018

Christopher I. McCabe

Plaintiff

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Date

215-330-5702

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Attorney-at-law

215-660-0182

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Attorney for

chris@charlsonlaw.com

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Telephone

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FAX Number

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E-Mail Address

(Civ. 660) 10/02

OCT 19 2018

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TJS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOORE OUTDOOR REJUVENATION, INC.  
139 Schoolhouse Lane  
Glen Mills, PA 19342

Plaintiff

vs.

BONDEX INSURANCE COMPANY  
30A Freeland Road, Suite 120  
Florham Park, NJ 07932

Defendant

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NO. \_\_\_\_\_

**COMPLAINT**

Plaintiff Moore Outdoor Rejuvenation, Inc. ("Moore"), by its undersigned counsel, files this complaint against Defendant Bondex Insurance Company ("Bondex"), and complains as follows:

**The Parties**

1. Moore is a contractor that performs site contracting work and is a Pennsylvania corporation, with its principal place of business located as stated above.
2. Bondex is a licensed insurance and surety company and a New Jersey corporation with its principal place of business located as stated above.

**Jurisdiction**

3. Jurisdiction is predicated on 28 U.S.C. § 1332, in that there is diversity of citizenship between plaintiff and defendant and the matter in controversy, exclusive of interest and costs, is in excess of \$75,000.
4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events or omissions giving rise to the claim occurred in this district.



**Background**

5. Republic First Bank d/b/a Republic Bank (“Republic Bank”) contracted with Nason Construction, Inc. (“Nason”) to perform construction work on a new bank on property owned by Republic Bank at 599 S. Oxford Valley Road, Fairless Hills, Bucks County, Pennsylvania (the “Project”).

6. The Project is covered by the Pa. Contractor and Subcontractor Payment Act.

7. Nason and Trio Siteworks LLC (“Trio”) entered into a subcontract for Trio to perform certain work on the Project.

8. Trio and Moore entered into a subcontract for Moore to perform certain work on the Project.

9. Moore performed and satisfactorily completed its work for Trio on the Project under its subcontract, including additional change order work approved by Trio.

10. Republic Bank has accepted and occupied all of Moore’s work performed for Trio.

11. Moore did not receive any notices of deficiency from Trio, Nason or Republic Bank for any of the work which it performed for Trio on the Project.

12. The amount due and owing to Moore from Trio is \$87,505.

13. All conditions precedent to Moore’s entitlement to payment from Nason and/or Trio for its work on the Project have been satisfied.

14. Upon information and belief, Republic Bank has not paid Nason for Trio’s work on the Project, including Moore’s work thereunder, and Nason in turn has not paid Trio for Trio’s work on the Project, including Moore’s work thereunder, due solely to deficiencies in the work which was performed solely by Trio on the Project.

15. None of Moore's work on the Project is a basis in any way for Republic Bank refusing to pay Nason for Trio's work on the Project, including Moore's work.

16. Despite repeated demands, Nason and Trio have, without justification, refused and failed to pay Moore the amount due and owing for Moore's work for Trio on the Project.

17. On or about August 10, 2017, Trio obtained from Bondex payment bond no. BX02240 (the "Bond") in the penal sum of \$452,000 for the benefit of subcontractors and suppliers to Trio on the Project and to secure payments owed by Trio to subcontractors and suppliers on the Project.

18. Moore is a claimant under and is within the class of persons protected by the Bond.

19. Moore filed a claim with Bondex against the Bond.

20. Bondex has failed and refused to honor Moore's claim against the Bond.

21. Moore has satisfied all conditions precedent to a claim under the Bond.

22. Bondex's failure and refusal to honor's Moore's claim and to pay Moore the amount which is due and owing for Moore's work for Trio on the Project is a breach of the terms and conditions of the Bond.

23. Under the Bond, due to Trio's failure and refusal to pay Moore the amount due and owing, Moore is entitled to payment from Bondex in the amount of \$87,505.

WHEREFORE, Plaintiff Moore Outdoor Rejuvenation, Inc., demands judgment in its favor and against Defendant Bondex Insurance Company in the sum of \$87,505, plus interest and costs, and such other and further relief as this Court deems just and proper.

CHARLSON BRABER MCCABE & DENMARK

By: s/ Christopher I. McCabe   
Christopher I. McCabe, Esquire